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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,182	08/29/2000	David Slocum	24837/04206	9219

7590

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EXAMINER

SMITH, ZANDRA V

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/650,182

Applicant(s)

SLOCUM ET AL.

Examiner

Zandra V. Smith

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-11, 13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-11 and 15-17 is/are allowed.
- 6) ☒ Claim(s) 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Sodickson et al.* (5,434,412) and *Goetz et al.* (4,134,683) and further in view of *Lubbers et al.* (3,825,342).

As to **claim 13**, Sodickson discloses a system for non-spectrophotometric measurement of analyte concentrations, comprising

filtering light from a plurality of filters, the filters being responsive across overlapping wavelength regions at the longer wavelengths of the visible spectrum (col. 8, lines 44-45);

detecting the filtered light and generating plurality of light signals (col. 13, lines 5-25);

and

generating an output based on the plurality of light signals that represent the color of the object (col. 9, lines 45-50). Sodickson differs from the claimed invention in that the signals are not read out in parallel or accumulated over a period of time, however to do so is well known as taught by Goetz. Goetz discloses a multi-spectral imaging system that reads a plurality of light signals in parallel (col. 3, lines 49-51); and generates output signals based on the plurality of light signals read to represent the color of the object (col. 3, lines 65-68). It would have been obvious to one having ordinary skill in the art at the time of invention to read the signals in parallel and accumulate the signals over time to provide faster read-out.

Art Unit: 2877

Sodickson and Goetz differ from the claimed invention in that the light signals are not accumulated for a selected amount of time, however to do so is well known as taught by Lubbers. Lubbers discloses an optical absorption analyzer that accumulates light signals produced by filtered light on a detector element (col. 2, lines 60-65) and accumulates the signals over a time period (col. 3, lines 10-15). It would have been obvious to one having ordinary skill in the art at the time of invention to accumulate data over a selected period of time to improve the signal-to-noise ratio.

*Allowable Subject Matter*

Claims 3-11 are allowable over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter: prior art of record fails to provide or fairly suggest, a color measuring device which includes, in combination, a field programmable gate array a plurality of optical filter pairs having a responsivity which extends over different overlapping wavelength regions at the longer wavelength end of the spectrum. In addition, the prior art of record fails to provide or fairly suggest, a colorimeter that includes a field programmable gate array a plurality of optical filter pairs having a responsivity that extends over different overlapping wavelength regions at the longer wavelength end of the spectrum.

*Response to Arguments*

Applicant's arguments with respect to claim 13 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 2877

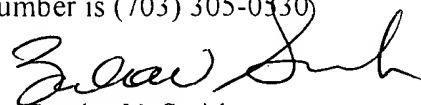
***Fax/Telephone Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (703) 305-7776.

The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703)308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0530.



Zandra V. Smith  
Primary Examiner  
Art Unit 2877

March 7, 2003